

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEATRICE BAMISHILE-RICHARDS ET AL.,

Plaintiffs,

-v-

OLUBUNMI ADEOLA AKINTOYE ET AL.,

Defendants.

21 Civ. 5264 (PAE) (RWL)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Plaintiffs Beatrice Bamishile-Richards and Oluwafisayo Meshioye seek damages from defendants Olubunmi Adeola Akintoye, Oluranti D. Akintoye, Bumak African Stores, and Damilola Akintoye,¹ based on claims of, *inter alia*, conversion, breach of contract, and fraud. Dkt. 9 (“Compl.”). On March 31, 2022, the Court held defendants in default and granted defense counsel’s motion to withdraw as counsel upon a showing that defendants had failed to meet discovery deadlines or otherwise participate in the litigation. *See* Dkt. 53. That day, the Court referred the case to the Honorable Robert W. Lehrburger, United States Magistrate Judge, for an inquest into damages. Dkt. 54.

On May 31, 2022, plaintiffs filed papers in support of their bid for damages, seeking such based on a claim of account stated. *See* Dkts. 66–68. On June 22, 2022, Judge Lehrburger entered on the docket an email from defendants expressing their desire to defend the case and directed plaintiffs to respond. Dkt. 69. On August 12, 2022, plaintiffs responded, stating that

¹ The Complaint also brings claims against George Williams, but he was later terminated as defendant. *See* Dkt. 36.

they intended to proceed with their motion for default judgment and questioning the authenticity of the email from defendants. Dkt. 74. On November 22, 2022, Judge Lehrburger conducted an inquest hearing, at which plaintiff's counsel was present and no one appeared for defendants.

On December 5, 2022, Judge Lehrburger issued a Report and Recommendation (the "Report"). Dkt. 87 ("Report"). He recommended that the Court award plaintiffs \$1,494,063.56 in damages, plus pre-judgment and post-judgment interest, against defendant Olubunmi Adeola Akintoye. These damages are based on theories of liability for breach of contract and account stated. Judge Lehrburger directed plaintiffs to serve the Report on defendants within three days of the Report's filing. *See id.* at 17. On April 20, 2023, plaintiffs served the Report. *See* Dkt. 88. No parties filed objections. The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts the Report.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). When specific objections are timely made, "[t]he district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF) (RLE), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

If a party objecting to a Report and Recommendation makes only conclusory or general objections, or simply reiterates its original arguments, the Court will review the Report strictly for clear error. *See Dickerson v. Conway*, No. 08 Civ. 8024 (PAE), 2013 WL 3199094, at *1 (S.D.N.Y. June 25, 2013); *Kozlowski v. Hulihan*, Nos. 09 Civ. 7583, 10 Civ. 0812 (RJH) (GWG), 2012 WL 383667, at *3 (S.D.N.Y. Feb. 7, 2012). This is so even in the case of a *pro se* plaintiff. *Telfair v. Le Pain Quotidien U.S.*, No. 16 Civ. 5424 (PAE), 2017 WL 1405754, at *1 (S.D.N.Y. Apr. 18, 2017) (citing *Molefe v. KLM Royal Dutch Airlines*, 602 F. Supp. 2d 485, 487 (S.D.N.Y. 2009)). Furthermore, “[c]ourts do not generally consider new evidence raised in objections to a magistrate judge’s report and recommendation.” *Tavares v. City of New York*, No. 08 Civ. 3782 (PAE), 2011 WL 5877548, at *2 (S.D.N.Y. Nov. 23, 2011) (collecting cases).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Lehrburger’s thorough and well-reasoned Report reveals no facial error in its conclusions. The Report is therefore adopted in its entirety. Because the Report explicitly states that the parties “shall have fourteen (14) days to file written objections,” and that the failure to file timely objections “will result in a waiver of objections,” the parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court accepts and adopts Judge Lehrburger’s Report and Recommendation in its entirety. The Court enters default judgment against Olubunmi Adeola Akintoye and awards plaintiffs \$1,494,063.56 in damages, plus pre-judgment and post-judgment interest. The Court dismisses the remaining claims and respectfully directs the Clerk of Court to close this case.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: July 31, 2023
New York, New York